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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SANTA ROSA DIVISION

In re:

DEAN GREGORY ASIMOS,  
Debtor.

Case No.: 11-13214-AJ

Chapter 7

Adv. Case No. 14-01018 CN

**OPPOSITION BRIEF OF JASON  
EVERETT THOMPSON TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

JASON EVERETT THOMPSON,  
Plaintiff,

v.

DEAN GREGORY ASIMOS,  
Defendant.

Date: November 4, 2020  
Time: 11:00 a.m.  
Location: 99 South E Street  
Santa Rosa, California

Judge: Hon. Charles Novak

Jason Everett Thompson ("Plaintiff" or "Thompson"), plaintiff, and creditor herein, hereby submits the following brief in opposition to the motion for summary judgment (the "Asimos Motion"), filed by debtor and defendant, Dean Gregory Asimos ("Debtor, "Defendant" or "Defendant Asimos") (Adv. D.I. 76).

1       **I. SUMMARY OF ARGUMENT**

2           In order to succeed on his motion for summary judgment, Defendant needs to establish  
3       that the undisputed facts conclusively show, as a matter of law, both of the following: (1) That  
4       Plaintiff's claims are "pre-petition" in nature under the "fair contemplation" doctrine even  
5       though the claims relate to Defendant Asimos' "post-petition" conduct; **and** (2) that Plaintiff's  
6       claims are not otherwise nondischargeable under Section 523(a)(6) in light of the alleged  
7       conduct of Defendant Asimos. Defendant has not fully established either, let alone both, of  
8       these required showings.

9  
10           First, Defendant fails to establish that Plaintiff should have "reasonably contemplated"  
11       all of the following:

12           (i)     That Defendant would sue him in the state court action claiming damages and  
13       attorneys' fees using the same contract that Defendant now claims he was freed of any  
14       obligations under, thereby forcing Plaintiff to incur nearly \$200,000 in attorneys' fees and costs  
15       as evidenced by the Contract Attorney Fee Award and the Court Cost Award;<sup>1</sup>

16  
17           (ii)    That Defendant would continue his assault on Plaintiff *after the Discharge* by  
18       litigating to conclusion the First Appeal, thereby forcing Plaintiff to incur another \$74,911.50  
19       as evidenced by the First Appeal Attorney Fee Award;

20  
21           (iii)   That Defendant would *knowingly and willfully* fail to execute, *after the*  
22       *Discharge*, the documentation required of him pursuant to the Permanent Injunction, thereby  
23       forcing Plaintiff to file and prosecute the Contempt Proceedings against Defendant, resulting in  
24       an additional \$62,785.37 in attorneys' fees (awarded pursuant to Code of Civil Procedure §  
25

26  
27           <sup>1</sup> Except as otherwise defined herein, capitalized terms shall have the meaning set forth in the Joint  
28       Stipulation of Facts in Support of Cross-Motions for Summary Judgment ("JSF") submitted in connection  
      with these motions (Adv. D.I. 73-2).

1 1218(a)) as evidenced by the Judgment of Contempt; or

2 (iv) That Defendant would continue further by litigating to conclusion the Second  
3 Appeal, thereby forcing Plaintiff to incur another \$55,808.00 in attorneys' fees (also awarded  
4 pursuant to Code of Civil Procedure § 1218(a)) as evidenced by the Second Appeal Attorney  
5 Fee Award.

6  
7 Likewise, Defendant Asimos equally fails to establish that his post-petition conduct does  
8 not rise to the level required by Section 523(a)(6) such that Plaintiff's claims are otherwise  
9 nondischargeable. The San Francisco Superior Court held multiple hearings during the course  
10 of the Contempt Proceedings and reached the binding and conclusive determination that  
11 Defendant was guilty, beyond a reasonable doubt, of contempt of court, based on the finding  
12 that Plaintiff "had knowledge of the Permanent Injunction, was able to comply at the of the  
13 Permanent Injunction and continued to have such ability, and willfully failed to comply with the  
14 Permanent Injunction." These findings and rulings of the superior court are binding on  
15 Defendant. He is not permitted to re-litigate them in this proceeding.

## 16 II. ARGUMENT

### 17 A. Defendant Asimos' Conduct Did Not Fall Within the "Fair Contemplation" of 18 the Parties.

#### 19 1. Unlike Asimos, None of the Debtors in the Cases Cited by 20 Defendant Sought Affirmative Relief Against the Creditor

21 Defendant Asimos cites to several cases decided within the Ninth Circuit for the general  
22 proposition that attorneys' fees stemming from a pre-petition contract fall within the "fair  
23 contemplation" of the parties and are therefore subject to the Discharge. *See, e.g., Picerne*  
24 *Construction Corp., DBA Camelback Construction v. Castellino Villas*, 836 F.3d 1028 (9<sup>th</sup> Cir.  
25 2016); *Baroni v. Wells Fargo Bank, N.A.*, 558 B.R. 916 (C.D. Cal. 2016); *In re SNTL Corp.*,  
26 571 F.3d 826 (9<sup>th</sup> Cir. 2009); *Cal. Dep't of Health Servs. v. Jensen*, 995 F.2d 925 (9<sup>th</sup> Cir. 1993).

1 [Asimos Motion at 7:19 – 10:28].

2 Plaintiff respectfully submits that none of these cases are implicated here because none  
3 of the debtors in those cases exhibited the same level of affirmative litigation conduct as did  
4 Defendant Asimos. In fact, the debtor in each of those cases merely engaged in defensive  
5 conduct in an attempt to preclude liability against him or her. Defendant Asimos, on the other  
6 hand, engaged in affirmative conduct that clearly amounted to a “whole new course of  
7 litigation.” *See, Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525, 533- 34 (9<sup>th</sup> Cir.  
8 1998); *see also, In re Ybarra*, 424 F.3d 1018, 1024 (9<sup>th</sup> Cir. 2005).

10 By way of example, in one of the cases cited by Defendant, *In re Castellino Villas*, the  
11 property owner (Castellino) filed its Chapter 11 petition after an arbitration award in favor of  
12 the general contractor (Picerne) was confirmed in the superior court. In a subsequent state court  
13 action in which Picerne sought to enforce a mechanics lien on the property, Castellino (the  
14 debtor) merely pursued its defenses in the mechanics lien action. Castellino did not seek to  
15 impose contractual liability under the pre-petition construction agreement against Picerne.

17 Notably, Picerne attempted to characterize Castellino’s litigation conduct as “more than  
18 simply seeking to extricate itself from the state court litigation” in an effort to bring its attorney  
19 fee claim within the *Siegel* and *Ybarra* exception to the fair contemplation doctrine. *In re*  
20 *Castellino* at 1036. To that end, Picerne pointed out that Castellino “brought a motion for  
21 summary judgment, opposed Picerne’s motion for summary judgment, took party and non-party  
22 discovery, and made a request for attorneys’ fees” *Id.* In light of that limited post-petition  
23 conduct of Castellino, the Court found that Castellino’s conduct did not reach the level of  
24 “affirmative action to commence what amounts to ‘a whole new course of litigation’” such that  
25 *Ybarra* and *Siegel* would be implicated. *Id.* at 1035-1036 (citing *Siegel*, 143 F.3d at 534).

28 By clear contrast, unlike the property owner/debtor in *Castellino*, Defendant Asimos did

1 not merely seek to extricate himself from the contractual liability that he ultimately received a  
2 discharge of. Instead, Defendant Asimos affirmatively sued Plaintiff for Breach of Contract,  
3 Breach of Good Faith and Fair Dealing, Accounting, Fraud and Concealment, and Constructive  
4 Trust in connection with their pre-petition contract by way of his cross-complaint, and litigated  
5 those claims all the way through judgment. [JSF ¶¶ 6, 11, Exhibits 2 and 3]. Certainly, if  
6 Defendant Asimos had been successful on his cross-complaint, he would have been entitled to  
7 recover his attorneys' fees against Plaintiff pursuant to the pre-petition contract. Accordingly,  
8 the *Ybarra* and *Siegel* line of cases control here. Defendant Asimos should not be allowed to  
9 use that same contract as a shield to avoid responsibility for the fees (the Contract Attorney Fee  
10 Award) that he forced Plaintiff to incur defending against his cross-complaint at trial.  
11

12  
13 Not only was Plaintiff required to defend himself at trial, Defendant Asimos continued  
14 to pursue affirmative relief against Plaintiff after judgment was entered, by filing and  
15 prosecuting the First Appeal, despite the fact that he had received a discharge under Chapter 7.  
16 He then forced Plaintiff to incur further fees and costs by refusing to execute the Authorization,  
17 as he was required to do under the Permanent Injunction. This resulted in Defendant Asimos  
18 being adjudged guilty of contempt of court, beyond a reasonable doubt, after five (5) separate  
19 hearings on the issues. This knowing and intentional conduct caused Plaintiff to incur over  
20 \$60,000 in attorneys fees and costs simply to obtain Defendant's signature on the Authorization.  
21 When he lost, Defendant Asimos still kept fighting, seeking to have the Contempt Judgment  
22 overturned by way of the Second Appeal, forcing Plaintiff to incur even further fees.  
23

24  
25 **2. Not All of The Attorneys' Fees and Costs At Issue Are Related to  
the Pre-Petition Contact**

26 Each of the cases cited by Defendant also involve claims for attorneys' fees that arise  
27 out of a prevailing party provision in a pre-petition contract. However, not all of the attorneys'  
28

1 fees and costs awarded to Plaintiff in the present dispute were contractual attorneys' fees.  
2 Specifically, the Contempt Judgment attorney fee award and the Second Appeal Attorney Fee  
3 Award were **not** based on the attorneys' fee provision in the pre-petition contract between the  
4 parties. Rather, those fees were awarded pursuant to California Code of Civil Procedure §  
5 1218(a) which provides: "[A] person who is subject to a court order as a party to the action, or  
6 any agent of this person, who is adjudged guilty of contempt for violating that court order may  
7 be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees  
8 and costs incurred by this party in connection with the contempt proceeding." [JSF ¶¶ 25, 30,  
9 Exhibits 10, 11 and 12].

11 As such, at least with respect to the Contempt Judgment and the Second Appeal Attorney  
12 Fee Award, none of the cases cited by Defendant Asimos are applicable. Defendant Asimos'  
13 post-Discharge conduct that resulted in the Contempt Judgment and the Second Appeal  
14 Attorney Fee Award could not, under any stretch of the imagination, have been "fairly  
15 contemplated" by Plaintiff at any time.

17 **B. Defendant Asimos Has Not Established, as a Matter of Law, That His Conduct**  
18 **Did Not Result in a Willful and Malicious Injury to Plaintiff**

19 **1. Defendant Asimos is Bound by The Actions of His Counsel**

20 Defendant Asimos contends "Plaintiff cannot establish that Asimos ever possessed the  
21 subjective motive to injure Plaintiff" and that Asimos' post-petition litigation conduct does not  
22 rise to the level of a willful or malicious injury to Plaintiff. [Asimos Motion at 4:18-21]. In  
23 support, Defendant Asimos claims that his attorney Jessica Barsotti failed to provide him with  
24 various updates in the case and that, consequently, "[t]hroughout most of the of state court  
25 lawsuit, Asimos was unaware of the actions that Barsotti was taking and simply was informed  
26 that it would be taken care of during the appeal and that the appellate court would fix the errors  
27  
28

1 of the Superior Court judge that presided over the bench trial.” [Asimos Motion at 12:28 –  
2 13:4].

3 Defendant Asimos cites several cases for the proposition that “Courts have generally  
4 recognized that a party’s reliance on the advice of his or her counsel can negate an otherwise  
5 intentional aspect of an act or position taken by the represented party.” *See e.g., Robinson v.*  
6 *Worley*, 848 F.3d 577, 586 (4th Cir. 2017); *Retz v. Samson*, 606 F.3d. 1189 (9th Cir. 2010); *In*  
7 *re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986); *Nunez v. Pennisi*, 241 Cal. App. 4th 861 (2015).  
8 [Asimos Motion at 11:9-18]. Defendant’s reliance on these cases is misplaced.  
9

10 For instance, in *Robinson v. Worley*, while it is true that the Court stated that a party’s  
11 reliance on the advice of his or her counsel can, generally, absolve a debtor of fraudulent intent,  
12 the Court went on to state that “the bankruptcy court must still consider whether the debtor  
13 acted in good faith.” *Robinson* at 586. The *Robinson* Court specifically held that “a debtor  
14 must demonstrate that he provided the attorney with all of the necessary facts and  
15 documentation.” *Id.* Defendant Asimos has made no such showing here nor, as set forth further  
16 below, can he.  
17

18  
19 **2. Defendant Asimos’ Own Words Contradict His Statement that**  
20 **He Was Not Aware of Attorney Barsotti’s Conduct**

21 Defendant Asimos’ asserted lack of knowledge is belied by his own words to Hon. Teri  
22 L. Jackson during the Contempt Proceedings on February 4, 2016, in which he clearly admitted  
23 that he knew about, and approved of, the conduct of his attorney in the state court proceedings.  
24 [Reporter’s Transcript of Proceedings – Motions, February 4, 2016 (“Contempt Transcript”) at  
25 18:8 – 22:25, attached as Exhibit 14 to the Second Declaration of Stephan E. Kyle (“Second  
26 Kyle Decl.”) submitted herewith and incorporated herein by reference].

27 **Importantly, at no time during this lengthy statement to the Superior Court did**  
28

1 **Defendant Asimos ever assert or proclaim, in an attempt to avoid the *mens rea***  
2 **determination necessary to contempt liability, that he had not been kept abreast of his**  
3 **lawyer's actions in the state court proceedings.** Instead, Defendant Asimos admitted his  
4 knowledge and intent, as follows:

5 MR. ASIMOS:

6 \*\*\*

7 I have been in this litigation with the plaintiff for over five years.  
8 I've waited over two years in the appeal -- Court of Appeal to get an  
9 answer.

10 \*\*\*

11 When I first stepped into an office here in San Francisco in  
12 November of 2009, I've dealt with this plaintiff for all of these years  
13 who has created fraud against me, and the judgment that was  
14 rendered was unfair. That's why it's in the Court of Appeals.

15 \*\*\*

16 The plaintiff, as a matter of record, stated two years after leaving  
17 working under my broker's license that his gross revenues for Wired  
18 Real Estate Group was \$100 million. The previous year -- and this  
19 is all in writing. 880,000 in 2011. When he was with me for two  
20 years, he generated a couple of deals that maybe gave me a few  
21 thousand dollars.

22 \*\*\*

23 I have not been treated fairly by this Court in my opinion and with  
24 all due respect, nor by the previous judge who heard the case, and I  
25 am praying against all hope that the Court of Appeals finds in my  
26 favor because this is a major travesty and miscarriage of justice.

27 \*\*\*

28 [A]lso, if the brief was read, and Mr. Kyle knows what's in the brief.  
He knows that his client deposited over \$500,000 in undisclosed  
deposits, which is sitting in front of the Court of Appeal right now  
into a Wells Fargo account when he was working as an agent of  
mine. All of this was disregarded.

\*\*\*

I filed this appeal in November of 2013, and I've been waiting  
patiently. I was in front of Judge Douglass, and I don't know if Mr.  
Kyle is also stating or telling you or if you understand that Judge  
Douglass -- Judge Douglass is the one who asked me to sign it and  
said he would hear me again and give me an opportunity to sign the



document.

\*\*\*

I signed the document, and I added that language because I felt I was being treated unfairly. Simple as that. There was no major intent to injure or hurt anyone. I earned that money from Mr. Thompson and for myself at an 85/15 split in favor of Mr. Thompson.

\*\*\*

I was hoping that this Court was going to see this contempt and wait until the Court of Appeals can run its course. Judge Jaroslovsky, Northern District, he was the bankruptcy judge. And Mr. Kyle knows because he has the motion. And he agreed we can't even go forward with the adversary proceeding because his client is attacking me in bankruptcy court. My constitutional right to file bankruptcy, and he's besmirching my reputation, my character, my integrity, and I've sat here.

Contempt Transcript at 18:13 – 22:15. \_\_\_\_\_

**3. Defendant Asimos Knew That Plaintiff Was Forced to Initiate and Prosecute Contempt Proceedings Against Him**

Defendant Asimos also misrepresents his level of knowledge regarding the Contempt Proceedings filed against him. Specifically he states: "I was unaware that the Plaintiff was pursuing a contempt proceeding against me as Barsotti did not immediately disclose that fact to me." (Declaration of Dean Asimos (Adv. D.I. 76-2) at ¶ 28.) This statement is also belied by the evidence. Defendant Asimos was, in fact, placed on notice on July 30, 2015 that Plaintiff intended to file contempt proceedings if he did not provide the original signed Authorization required by the Permanent Injunction. Plaintiff's counsel sent this notice not only to attorney Barsotti, *but also sent a copy of this letter to Defendant Asimos' counsel in this case, Joseph Angelo.* [See, July 30, 2015 Letter to Jessica R. Barsotti, Esq., which is copied to Joseph Angelo, Esq., attached as Exhibit 15 to the Second Kyle Decl.]. Certainly Defendant Asimos does not contend that Mr. Angelo also failed to advise him of the threatened contempt proceedings.

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### III. CONCLUSION

Accordingly, Plaintiff respectfully requests that Defendant Asimos' motion for summary judgment be denied.

DATED: October 21, 2020

By /s/ Stephan E. Kyle  
Stephan E. Kyle, Esq.  
Attorneys for Jason Everett Thompson